



Council Communication

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: MARK HORN, INTERIM PUBLIC WORKS DIRECTOR 480-503-6420
NICOLE DAILEY, ASSISTANT TO THE TOWN MANAGER 480-503-6756

THROUGH: PATRICK BANGER, TOWN MANAGER
MARC SKOCYPEC, DEPUTY TOWN MANAGER

MEETING DATE: SEPTEMBER 6, 2012

SUBJECT: STAFFING AUGMENTATION AND COMPLIANCE AND REPORTING
AUDIT FOR WATER PRODUCTION AND WATER QUALITY

STRATEGIC INITIATIVE: High Performing Government

Click here to enter text.

LEGAL REVIEW

☒ Complete

☐ N/A

FINANCIAL REVIEW

☒ Complete

☐ N/A

RECOMMENDED MOTION

A motion to approve a professional services Contract #2013-4108-0086 with CH2M HILL Engineers, Inc. in an amount not to exceed \$367,387 to provide professional services for staffing augmentation and completion of a compliance and reporting audit for Gilbert's Water Quality and Water Production systems and authorize the Mayor to complete the necessary documents and to transfer \$367,387 from Water Fund Contingency to the Water Operations Fund.

BACKGROUND/DISCUSSION

In 2000, Gilbert voters passed Proposition 413, upholding the Council's action directing the installation of fluoridation equipment at Gilbert's surface water treatment facility. Gilbert's water production system

was changed in accordance with Proposition 413 and the Town began fluoridating the water treated at the North Water Treatment Plant. The North Water Treatment Plant was retrofitted with a fluoride feed system; the Santan Vista Water Treatment Plant was built years later with a fluoride system already incorporated into its operations. The North Water Treatment Plant has an annual operating budget of approximately \$5.87 million and has a current estimated replacement value of approximately \$60 million. The Santan Vista Water Treatment Plant has an annual operating budget of approximately \$2.1 million and a current estimated replacement value of \$75 million.

In August of 2012, Town Management discovered the fluoride system at the North Water Treatment Plant had been shut off and had not been in operation since the summer of 2011. Management has been investigating the situation and has determined an appropriate response is to initiate an independent operational review of our Water Production and Water Quality systems, including a compliance and reporting audit. It is important that we maintain trust with our community and ensure best management practices are being utilized in our operations. In addition to the operational review and compliance and reporting audit, Town staff is working with Carollo Engineers to get the fluoride system at the North Water Treatment Plant properly designed and operational as soon as possible. At this time, it is estimated that design for the fluoride system and accompanying ventilation will take approximately 30 days (tentatively complete by the end of September) with construction taking an additional 30-60 days after completion of design. Design is currently underway.

CH2M HILL Engineers, Inc. has been identified to provide the water production and operational review services for Gilbert. Due to the scale and scope of work needed to review Gilbert's operations and provide onsite operational staffing, it was important to find a company with enough human resources and technical skill within their operational and audit capacity to meet Gilbert's needs. CH2M HILL is a full-service, worldwide company whose operations date back to 1946. While CH2M HILL provides a range of services, one of their primary areas of expertise is Water Management. CH2M HILL will bring a team of experts from across the country to augment Gilbert's staff while completing the operational review and compliance and reporting audit. CH2M HILL will use local and nationally based Staff members for the duration of the audit. Some CH2M Staff members will be temporarily relocating to Gilbert for the duration of the service contract to ensure continuity of operations and provide onsite management and an in-depth review of Gilbert's management practices. The contract has a term of up to two months where the services referenced will be provided.

The scope of work includes a review of Gilbert's water management operating practices in addition to the compliance and reporting audit that will be completed. CH2M HILL will provide management practice recommendations and training to staff as well as any recommended correction plans if needed. The full scope of work is outlined in the attached contract.

The Contract was reviewed for form by Attorney Susan Goodwin.

FINANCIAL IMPACT

Funding is available within the existing Water Contingency line item. \$1,765,000 was budgeted in contingency for the current fiscal year. The use of these contingency funds will not impact the water rates or the funding already budgeted for standard Water operations. No other contingency transfers have occurred in the Water fund for the current fiscal year.

The contract for these professional services with CH2M HILL Engineers, Inc. is not to exceed \$367,387. There is a base contract amount of \$321,307. The contract includes an additional \$46,080 in

Supplemental Services to be authorized at the discretion of Gilbert if needed for proper management of the project.

The financial impact was reviewed by Laura Lorenzen, Budget and Financial Planning Analyst.

STAFF RECOMMENDATION

Staff recommends approval of this contract and accompanying contingency transfer.

Respectfully submitted,

Mark Horn
Interim Public Works Director

Nicole Dailey
Assistant to the Town Manager

AGREEMENT FOR PROFESSIONAL SERVICES

THIS Agreement is entered into as of this ____ day of _____, 2012, by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter referred to as "Gilbert" and CH2M HILL Engineers, Inc., a Delaware corporation, hereinafter referred to as the "Contractor."

FOR THE PURPOSE of providing professional services for Gilbert on the North Water Treatment Plant Operations Project, hereinafter referred to as the "Project," Gilbert and Contractor do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

1.1 Retention of the Contractor. In consideration of the mutual promises contained in this Agreement, Gilbert engages the Contractor to render professional services set forth herein, in accordance with all the terms and conditions contained in this Agreement.

1.2 Scope of Services. The Contractor shall do, perform and carry out in a satisfactory and proper manner, as determined by Gilbert, the services set forth in this Agreement, including all exhibits ("Services"). The specific scope of work for this Project is set forth in Exhibit A.

1.3 Responsibility of the Contractor.

1.3.1 Contractor hereby agrees that the Services provided by Contractor shall comply with all applicable laws and regulations. Contractor shall use those methods techniques, standards and practices which at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as prudent in the operation, maintenance, repair, replacement and management of a municipal water treatment plant as practiced in the southwest region of the United States. In addition, and not as a limitation on the foregoing, Contractor covenants with Gilbert to furnish its best skill and its best judgment in all matters related to the Project and in all ways to further the interests of Gilbert and the Project.

1.3.2 Contractor shall tour the Project site and become familiar with existing conditions and immediately notify Gilbert in writing of any constraints associated with the Project site.

1.3.3 Contractor shall procure and maintain during the course of this Agreement insurance coverage required by Paragraph 4 of this Agreement.

1.3.4 Contractor shall designate Ryan Rhoades as Project Manager and all communications shall be directed to him. Key Contractor Personnel are set forth in Exhibit B. "Key Personnel" includes the Contractor employee who will place his license number and signature on key documents and those employees who have significant responsibilities regarding

the Services and Project. Prior to changing such designation Contractor shall first obtain the written approval of Gilbert.

1.3.5 Contractor's subcontracts are set forth in Exhibit B attached hereto and made a part hereof. Any modification to the list of Subcontractors on Exhibit B, either by adding, deleting or changing subcontractors, shall require the written consent of Gilbert.

1.3.6 Contractor shall obtain its own legal, insurance and financial advice regarding Contractor's legal, insurance and financial obligations under this Agreement.

1.3.7 Contractor shall coordinate its activities with Gilbert's representative and submit its reports to Gilbert's representative.

1.3.8 It is understood by all parties that Gilbert staff will be reporting directly to the Contractor for day to day operations, but will not be employed by the Contractor. In the event any of Gilbert's employee(s) actions are made contrary to Contractor's direction or without Contractor's knowledge, Gilbert shall assume any liability resulting from that Gilbert employee(s) actions and Contractor shall be held harmless for operation outside these actions.

1.4 Responsibility of Gilbert.

1.4.1 Gilbert shall cooperate with the Contractor by placing at his disposal all available information concerning the site of the Project. Contractor shall reasonably rely upon the accuracy and completeness of the information provided by Gilbert. Gilbert agrees to obtain its own legal, insurance and financial advice Gilbert may require for the Project.

1.4.2 Gilbert designates Mark Horn as its Project Representative. All communications to Gilbert shall be through its Project Representative.

1.5 Contract Term. This Contract shall commence on September 10, 2012 and shall terminate on November 9 2012, unless terminated earlier pursuant to Section 6. Gilbert's Project Representative may extend the term by providing Contractor thirty (30) days' prior written notice. Such notice shall include the proposed amended termination date.

2. COMPENSATION AND METHOD OF PAYMENT

2.1 Compensation. All compensation for complete and satisfactory completion of services rendered by Contractor, including its subcontractor(s), shall be set forth in Exhibit C.

2.2 Method of Payment. Gilbert will compensate Contractor as set forth in Exhibit C. Monthly invoices will be issued by Contractor for all Services performed under this Agreement. Work performed under this Agreement, may be performed using labor from affiliated companies of Contractor. Such labor will be billed to Gilbert under the same billing terms applicable to Contractor's employees.

2.2.1 Contractor will submit invoices on a monthly basis to Gilbert each month covering services completed to date. Each invoice will be prepared in Contractor's standard form and supported by documentation according to Contractor's standard practice. Invoices will include itemized labor and billing rates, expenses, and details of the work performed for that billing cycle.

2.2.2 Invoices are due and payable on receipt. Interest at a rate of 1-1/2 percent per month, or that permitted by law if lesser, will be charged on all past-due amounts starting thirty (30) calendar days after date of invoice. Payments will first be credited to interest and then to principal.

2.2.3 In the event of a disputed or contested billing, only that portion so contested shall be withheld from payment, and the undisputed portion shall be paid. Gilbert will exercise reasonableness in disputing any bill or portion thereof. No interest will accrue on any disputed portion of the billing until mutually resolved.

2.2.4 If Gilbert fails to make payment in full within thirty (30) calendar days of the date due for any undisputed billing, Contractor may, after giving seven (7) calendar days' written notice to Gilbert, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, Contractor will have no liability to Gilbert for delays or damages caused by Gilbert because of such suspension.

3. CHANGES TO THE SCOPE OF SERVICES

3.1 Change Orders. Gilbert may, at any time, and by written change order, make changes in the services to be performed under this Agreement. A form of change order is attached hereto as Exhibit D. If such changes cause an increase or decrease in the Contractor's cost or time required for performance of any services under this Agreement, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be submitted in writing within thirty (30) calendar days from the date of receipt by the Contractor of the notification of change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by Contractor will be allowed by Gilbert except as provided herein nor shall Contractor provide any services or furnish any materials not covered by this Agreement unless Gilbert first approves in writing.

3.2 Asbestos or Hazardous Substances.

3.2.1 If asbestos or hazardous substances in any form are encountered or suspected, Contractor will stop its own work in the affected portions of the PROJECT to permit testing and evaluation.

3.2.2 If asbestos is suspected, Contractor will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

3.2.3 When applicable, if hazardous substances other than asbestos are suspected, Contractor will, if requested, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated.

3.2.4 Gilbert recognizes that Contractor assumes no risk and/or liability for a waste or hazardous waste site originated by other than Contractor.

4. INSURANCE REPRESENTATIONS AND REQUIREMENTS

4.1 General. Contractor agrees to comply with all Gilbert ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of A-7 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to Gilbert. Failure to maintain insurance as specified may result in termination of this Agreement at Gilbert's option.

4.2 No Representation of Coverage Adequacy. By requiring insurance herein, Gilbert does not represent that coverage and limits will be adequate to protect Contractor. Gilbert reserves the right to review any and all endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

4.3 Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers Compensation insurance and Professional Liability insurance if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

4.4 Coverage Term. All insurance required herein shall be maintained in full force and effect until all Services required to be performed under the terms of this Agreement is satisfactorily performed, completed and formally accepted by Gilbert, unless specified otherwise in this Agreement.

4.5 Primary Insurance. Contractor's insurance shall be primary insurance as respects performance of subject contract and in the protection of Gilbert as an Additional Insured.

4.6 Claims Made. In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the Services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

4.7 Waiver. All policies, including Workers’ Compensation Insurance, shall contain a waiver of rights of recovery (subrogation) against Gilbert, its agents, representative, officials, directors, officers, and employees for any claims arising out of the Services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

4.8 Policy Deductibles and or Self Insured Retentions. The policies set forth in these requirements may provide coverage, which contain deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to Gilbert. Contractor shall be solely responsible for any such deductible or self insured retention amount.

4.9 Use of Subcontractors. If any Services under this Agreement are subcontracted in any way, Contractor shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting Gilbert and Contractor. Contractor shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

4.10 Evidence of Insurance. Prior to commencing any Services under this Agreement, Contractor shall furnish Gilbert with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Contractor’s Insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage’s, conditions, and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Acceptance and reliance by Gilbert on a Certificate of Insurance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such Certificate(s) shall identify the Agreement and be sent to Gilbert’s Risk Manager. If any of the above cited policies expire during the life of this Agreement, it shall be Contractor’s responsibility to forward renewal Certificates within thirty (30) calendar days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

4.10.1 Gilbert, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:

- a. Commercial General Liability-Under ISO Form CG 20 10 11 85 or equivalent.
- b. Auto Liability-Under ISO Form CA 20 48 or equivalent.

c. Excess Liability-Follow Form to underlying insurance.

4.10.2 Contractor's insurance shall be primary insurance as respects performance of this Agreement.

4.10.3 All policies, including Workers' Compensation, waive rights of recovery (subrogation) against Gilbert, its agents, representatives, officers, directors, officials and employees for any claims arising out of Services performed by Contractor under this Agreement.

4.10.4 Certificate shall cite a thirty (30) day advance notice cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

4.11 Required Coverage:

4.11.1 Commercial General Liability: Contractor shall maintain "occurrence" from Commercial Liability Insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 10 11 85 or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you". If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

4.11.2 Professional Liability: Contractor shall maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by Contractor, or anyone employed by Contractor, or anyone for whose acts, mistakes, errors and omissions Contractor is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. Professional Liability coverage specifically shall contain contractual liability insurance covering the contractual obligations of this Agreement. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the Services, and Contractor shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

4.11.3 Vehicle Liability: Contractor shall maintain Business Automobile Liability Insurance with a limit of \$1,000,000 each occurrence on Contractor's owned, hired, and non-

owned vehicles assigned to or used in the performance of the Contractor's Services under this Agreement. Coverage will be at least as broad as Insurance Services Office, Inc., coverage code "1" any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

4.11.4 Workers' Compensation Insurance: Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance Services under this Agreement and shall also maintain Employer Liability Insurance, of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

4.11.5 Gilbert's Insurance – Gilbert will maintain the following insurances throughout the term of the Agreement, and shall provide Contractor with Certificates of Insurance to demonstrate compliance with this provision:

4.11.5.1 Property Damage Insurance for all property including Gilbert supplied vehicles and equipment for the full market value of such property.

4.11.5.2 Liability Insurance for all motor vehicles and equipment provided by Gilbert and operated by Contractor.

4.11.6 Contractor will provide a waiver of subrogation against Gilbert as to all insurances required to be carried hereunder.

5. INDEMNIFICATION

5.1 Contractor shall indemnify and hold Gilbert harmless from any and all claims, damages, losses, and expenses, including litigation costs and attorneys' fees to the extent that such are due to the negligent actions of Contractor directly related to the Scope of Services. Similarly, Gilbert shall indemnify and hold Contractor harmless from any and all claims, damages, losses, and expenses, including litigation costs and attorney's fees, to the extent that such are due to actions or inactions of Gilbert directly related to the Scope of Services. Gilbert's indemnification of Contractor specifically extends to, but is not limited to, the presence, discharge, release, or escape of contaminants of any kind, excepting only such liability as may arise out of and limited only to the extent that Contractor is negligent in the performance of the Scope of Services under this Agreement.

5.2 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this

paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

6. TERMINATION OF THIS AGREEMENT

6.1 Termination. Gilbert or Contractor may, by written notice to the other, terminate this Agreement in whole or in part with seven (7) calendar days notice, either for Gilbert's convenience. Upon receipt of such notice from Gilbert, the Contractor shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Gilbert copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Agreement, whether completed or in process. If Contractor terminates this Agreement, Contractor shall immediately cease performing Services upon delivery of the notice.

6.2 Payment to Contractor Upon Termination. If the Agreement is terminated, Gilbert shall pay the Contractor for the Services rendered prior thereto in accordance with percent completion at the time work is suspended minus previous payments.

7. ASSURANCES

7.1 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and any Regulations relative to nondiscrimination on the grounds of race, color or national origin.

7.2 Examination of Records. The Contractor agrees that duly authorized representatives of Gilbert shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Agreement.

7.3 Ownership of Document and Other Data. Original documents, such as tracings, plans, specifications, maps, basic survey notices and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement or any change order are and will remain the property of Gilbert unless otherwise agreed to by both parties. Gilbert may use such documents for other purposes without further compensation to the Contractor; however, any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at Gilbert's sole risk and without liability or legal exposure to Contractor. Any verification or adaptation of the documents by Contractor for other purposes than contemplated herein will entitle Contractor to further compensation as agreed upon between the parties.

7.4 Litigation. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, that all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees incurred shall be paid to the prevailing party.

7.5 Independent Contractor. Contractor shall be an independent contractor and not an agent of Gilbert and shall direct and supervise the services required by this Agreement and shall be responsible for all means, methods, techniques, sequences and proceedings associated with the Services and shall be responsible for the acts and omissions of its employees, agents and other persons performing any of the Services under a contract with the Contractor.

7.6 Immigration Law Compliance Warranty. As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert, at its option, may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

7.7 Equal Treatment of Workers. Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Services. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to, laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees.

7.8 Exclusive Use of Services - Confidentiality. The services agreed to be provided by Contractor within this Agreement are for the exclusive use of Gilbert and Contractor shall not engage in conflict of interest nor appropriate Gilbert work product or information for the benefit of any third parties without Gilbert’s consent.

7.9 Sole Agreement. There are no understandings or agreements except as herein expressly stated.

7.10 Caption. Paragraph captions are for convenience only and are not to be construed as a part of this Agreement; and in no way do they define or limit the Agreement.

7.11 Time is of the Essence. The timely completion of the Project is of critical importance to the economic circumstances of Gilbert.

7.12 Notices. Any notice to be given under this Agreement shall be in writing, shall be deemed to have been given when personally served or when mailed by certified or registered mail, or express commercial delivery service, addressed as follows:

GILBERT:

Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85390

CONTRACTOR:

Attn: Cynthia M. Beyer, Esq.
CH2M HILL Engineers, Inc.
9191 S. Jamaica Street
Englewood, CO 80112

The address may be changed from time to time by either party by serving notices as provided above.

7.13 Controlling Law. This Agreement is to be governed by the laws of the State of Arizona.

8. SUSPENSION OF WORK

8.1 Order to Suspend. Gilbert may order the Contractor, in writing, to suspend all or any part of the Services for such period of time as he may determine to be appropriate for the convenience of Gilbert.

8.2 Adjustment to Contract Fee. If the performance of all or any part of the Services is, for any unreasonable period of time, suspended or delayed by an act of Gilbert in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Agreement necessarily caused by such unreasonable suspension or modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance was suspended or delayed for any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Agreement.

9. INTERESTS AND BENEFITS

9.1 Interest of Contractor. The Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The

Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

9.2 Interest of Gilbert Members and Others. No officer, member or employee of Gilbert and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the services to be performed under this Agreement, shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the process thereof.

9.3 Notice Regarding A.R.S. § 38-511. Under Section 38-511, Arizona Revised Statutes, as amended, Gilbert may cancel any Agreement it is a party to within three (3) years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of Gilbert is, at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. In the event Gilbert elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, Gilbert agrees to immediately give notice thereof to the Contractor.

10. ASSIGNABILITY

The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same without the prior written consent of Gilbert thereto; provided, however, that claims for money due or to become due to the Contractor from Gilbert under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to Gilbert.

IN WITNESS WHEREOF, Gilbert and the Contractor have executed this Agreement as of the date first written.

TOWN OF GILBERT

By: _____
John W. Lewis, Mayor

ATTEST:

By: _____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

By: _____
Curtis, Goodwin, Sullivan,
Udall & Schwab, P.L.C.
Town Attorneys
Susan D. Goodwin, Esq.

CONTRACTOR

By: _____
Its: _____

EXHIBIT A

SCOPE OF WORK

The Town of Gilbert has requested CH2M HILL (Contractor) to provide staffing augmentation to fill management vacancies at their water production facilities.

Task 1. Project Management

1. Contractor will designate a project manager, to be the primary point of contact to the Town. Contractor will provide on-going project management of the budget, schedule, quality, and staffing coordination.
2. Contractor will designate a principal in charge, to be an alternate point of contact for the Town and oversight.
3. Bi-weekly meetings will be held to discuss the status of the project and other project management coordination.
4. The Town will provide Contractor access to the Town computer network is necessary to perform job functions. Town will either provide City computers or alternatively Contractor will provide laptops and City will provide firewall permissions.

Task 2. Water Production Management

5. If authorized by the Gilbert project representative, Contractor shall provide oversight and management of the water production system.
6. For the purposes of this scope of the water production facilities include:
 - i. 45 MGD North Water Treatment Plant (NWTP)
 - ii. 24 MGD Santan Vista Water Treatment Plant (SVWTP)
 - iii. 24 remote well sites, of which 18 sites are currently in operation
7. The Water Production Manager will have direct supervision of Town operations staff as it pertains to the operations of the water production facilities with the cooperative objective to maintain continuity of existing operations of the water production facilities.
8. Contractor will designate a full-time water production manager with the following duties:
 - i. report to the Town's designated official for day to day operations of the water production facilities.
 - ii. Grade IV operator license who will serve as the direct operator or operator in charge for water production facility regulatory permits.
 - iii. average work schedule will be 5 days per week at 10 hours per day. Any hours above this level of effort when averaged over a week will be paid for under supplemental services.
 - iv. review all reporting data prior to being reported to the State.
 - v. Provide a weekly status of performance and compliance reporting.

9. The Town will notify the State Department of Environmental Quality for changes to the operator of record for regulatory permits. The Town has initially notified ADEQ of the potential changes and the 10 calendar day reporting requirement has been satisfied.
10. The water distribution system, metering and utility locating will continue to be managed separately by the Town. CH2M HILL will coordinate with the distribution manager as required for daily activities.
11. Human Resources and primary supervision of water production staff will be maintained by the Town. The Town will remain the primary supervisor as it relates to personnel benefits, compensation, and other performance based items. Contractor will advise the Town project representative if an individual employee is or is not performing the job functions as it pertains to their role and will report their attendance records.
12. Near the end of the contract period, Contractor will assist Town in training staff as needed for an effective transition of management and oversight.

Task 3. Water treatment plant supervision

13. If authorized by the Gilbert project representative, Contractor shall provide oversight and management of the North Water Treatment Plant.
14. If authorized by the Gilbert project representative, Contractor shall provide oversight and management of the Santan Vista Water treatment Plant.
15. If authorized pursuant to paragraphs above, plant operations supervision for both plants will include:
 - i. Lead operator-in-charge of plant operations
 - ii. will not be required to perform shift operator work to avoid conflicts with oversight duties
 - iii. operator/staff work shift scheduling
 - iv. This task assumes current staff levels are adequate for plant operations and maintenance
 - v. average work schedule will be 5 days per week at 8 hours per day. Any hours above this level of effort when averaged over a week will be paid for under supplemental services.
 - vi. any expenses for operations and maintenance of the facility will be paid directly by the Town.
16. Start-up of the fluoride feed system
 - i. The Town's fluoride feed system at the NWTP is not currently in operation. Design for facility modifications are expected to be complete in 30 days with an additional 60 days estimated for construction.
 - ii. Contactor will assist with the startup and commissioning of this system if this occurs within the schedule of services for this scope.
 - iii. Work with Town and designated Consultant for system improvements to get the Fluoride feed system operational

- iv. Provide start-up and commissioning of the fluoride feed system, when available for service

Task 4. Water Quality Supervision

- 17. If authorized by the Gilbert project representative, the Contractor will provide water quality supervision and staff augmentation.
 - i. The NWTP plant supervisor will also serve in an oversight role as the Town's water quality manager. In this role the water quality manager is responsible for overseeing water quality testing and reporting for the NWTP, SVWTP, remote facilities, and distribution system.
 - ii. At the discretion of the Gilbert project representative, the existing water quality supervisor with the Town will remain with the current roles and responsibilities and will be reporting directly to the NWTP plant supervisor.
 - iii. The Town will notify ADEQ within 20 business days of any changes to the current laboratory certificate.
 - iv. The laboratory audit review as part of this scope will determine the actual staffing needs for water quality supervision. It is understood that there are currently lab positions open. For the purposes of this scope, the following is assumed:
 - 1. The Water Quality Supervisor will continue to supervise the Town laboratory chemist and water quality technicians.
 - 2. The Town currently has 3 chemist positions, of which 2 are currently filled
 - 3. The Town currently has 3 water quality technician positions, of which 2 are currently filled.
 - 4. Contractor will provide a full-time laboratory technician in a staff augmentation role beginning September 24.

Task 5. Compliance and Reporting Audit

- 18. This task will involve multiple operational specialists to perform a compliance and reporting audit.
- 19. The Contractor will designate a compliance audit lead for the audit and to provide quality control for this task.
- 20. A two day compliance audit orientation will be conducted with participants including Town water production facility managers and operations staff. An agenda has been provided to the Town.
- 21. The Contractor will utilize audit checklists for the review process.
- 22. Perform Drinking Water Treatment Compliance Audit
 - i. Contractor will lead the review for drinking water treatment compliance audit and will be on-site at both treatment plants for 10 days. To limit expenses, the remainder of the work will be completed off-site.
 - ii. Review permit requirements and develop a compliance matrix

- iii. Review of previous permits and reporting for previous 3 years of operations
 - iv. Meet with the Town within 3 weeks of starting this task to review to provide a status of review and initial findings.
 - v. Advise the Town of non-compliance and incomplete/inadequate compliance reporting and recommend a correction plan.
 - vi. Provide a compliance audit report and meet with regulatory authorities at the discretion of the Town
- 23. Review Standard Operating Procedures
 - i. Review current standard operating procedures for facility processes and emergency conditions
 - ii. Interview plant staff regarding adherence to SOPs and other operating strategies
 - iii. Advise on best management practices based on industry experience
 - iv. Provide summary report and matrix of SOP status, missing SOPs, and recommended modifications
- 24. Laboratory and Reporting Audit
 - i. Contractor will lead the review for the operator training and laboratory audit and be on-site at both treatment plants for 10 days. To limit expenses, the remainder of the work will be completed off-site.
 - ii. Review laboratory standard operating procedures such as laboratory conditions, certifications, chain of custody, lab equipment, staff training, quality control and reporting.
 - iii. Meet with the Town within 3 weeks of starting this task to review to provide a status of review and initial findings.
 - iv. Advise the Town of non-compliance and incomplete/inadequate compliance and recommended correction plan
- 25. Operator Training Compliance
 - i. Review staff operator training records
 - ii. Report inadequate or expired training relative to regulatory compliance and job duties and recommend a correction plan

Supplemental Services

Task 6. Supplemental Operations Supervision Overtime

- 26. Under this supplemental task, the Contractor may provide additional operations supervision services on an hourly basis for any additional work above 40 hours per week per individual, for work described in Tasks 2 and 3, and on an as-needed basis. Due to the on-call and sometimes immediate nature of this work during off-hours, the Contractor may proceed with this work and notify the Town's project representative at the earliest convenience during business hours. At that time, the

Town's project representative will determine the desired level of effort, with consideration made by the Contractor judgment to the level of effort necessary to meet the project objective.

Schedule

This work will initially be from a period of September 10 through November 9, 2012. The Town will notify CH2M HILL 30 days in advance if the Town intends to continue CH2M HILL services beyond this initial term, if the current staffing commitments are desired. CH2M HILL must maintain the workload of these individuals and cannot confirm the availability if not provided this notification.

Compensation

A level of effort and fee estimate is included in Exhibit C.

EXHIBIT B

CONTRACTOR'S KEY PERSONNEL AND SUBCONTRACTORS

KEY PERSONNEL:

Project manager: Ryan Rhoades, P.E.

Principal-In-Charge: Rob Kuta

Water production manager: Darrel Blanchard

Bill Gierer

Steve Carpenter

SUBCONTRACTORS:

None

EXHIBIT C
PAYMENT SCHEDULE

A. Compensation

1. The consideration of payment to Contractor, as provided herein shall be in full compensation for all of Contractor's work incurred in the performance hereof, including offices, travel, per diem or any other direct or indirect expenses incident to providing the services.
2. This work will be accomplished on a time and materials basis at a raw labor multiplier rate of 3.0 (with the exception of Bill Gierer at a rate of 2.5 as outlined in Exhibit C-1). Attached hereto as Exhibit C-1 is the Contractor's hours and fee estimate for the Project. Contractor's fee shall be time and materials with a not to exceed amount of \$367,387 without written approval of the Town of Gilbert.

Description	Amount
Task 1 Project Management	\$17,060
Task 2 Water Projection Management	\$69,547
Task 3 Water Treatment Plant Superintendent	\$145,538
Task 4 Water Quality Supervision	\$44,915
Task 5 Compliance and Reporting Audit	\$44,247
Total (Base Scope)	\$321,307
Task 6 Supplement Operator Overtime	\$46,080
Total (Base + Supplemental, Not To Exceed)	\$367,387

B. Method of Payment

Invoices shall be on a form and in the format provided by Gilbert and are to be submitted in triplicate to Gilbert via Gilbert's authorized representative.

C. Reimbursable Costs

The items allowable for reimbursement are as follows:

1. Cost of transportation. Any out of state travel must receive prior approval of Gilbert.
 - A. Mileage associated with Project, but not to/from Project site, at 54.5 cents per mile.
 - B. In addition to labor as set forth in Paragraph A, the Town will pay for reasonable coach air travel and per diem expenses without markup for full-time and

traveling staff, which travel is hereby approved for Contractor's personnel listed on Exhibit B for one round-trip once per month from the current residence of such personnel to Gilbert.

2. Costs of printing, as required by the contract.
3. Cost of long distance telephone, postage, UPS, Federal Express, etc.
4. Cost of other items as required, with prior written approval from Gilbert.

All reimbursable costs must be submitted with monthly bill.

**EXHIBIT D
CHANGE ORDER**

CHANGE ORDER NO. _____

Distribution:	GILBERT	[]
	CONTRACTOR	[]
	OTHER	[]

PROJECT: _____

DATE:

OWNER: Gilbert

CONTRACTOR:

AGREEMENT DATED:

CHANGES: The Agreement is changed as follows:

Not valid until signed by both Gilbert and Contractor.

Signature of Contractor indicates acceptance.

The original compensation was _____

Net change by previously authorized Change Orders _____

The compensation prior to this Change Order was _____

The compensation will be increased by this Change Order in the amount of

The new compensation under the Agreement including this Change Order will be

The Contract Time will increase by _____

ACCEPTANCE STATUS:

Contractor

Gilbert

By _____

By _____

Date _____

Date _____

Exhibit C-1

Town of Gilbert Water Production Staff Augmentation

Task	Category	PIC	Project Manager	Water Production Manager	NWTP Super	SVWTP Super	Lab Support	Operations Specialist	Operations Specialist	Quality Control	Admin/Account	Labor Hours	Labor Cost	Travel	Expense	Total Cost
	Raw Labor Multiplier	3.0	3.0	3.0	2.5	3.0	3.0	3.0	3.0	3.0	3.0					
	Billing Rate	\$337.65	\$183.17	\$164.70	\$191.30	\$156.00	\$95.00	\$106.48	\$99.75	\$224.32	\$83.65					
1	Project Management	18	44								20	82	\$15,810	\$250	\$1,000	\$17,060
2	Water Production Manager			360								360	\$59,292	\$10,255	\$0	\$69,547
3	Water Treatment Plant Supervision				360	360						720	\$125,028	\$20,510	\$0	\$145,538
	North WTP Superintendent				360							360	\$68,868	\$10,255	\$0	\$79,123
	Santan Vista WTP Superintendent					360						360	\$56,160	\$10,255	\$0	\$66,415
4	Water Quality Supervision		44				280					324	\$34,660	\$10,255	\$0	\$44,915
5	Compliance and Reporting Audit							120	120	60		300	\$38,207	\$6,040	\$0	\$44,247
	Treatment Compliance Audit							120		30		150	\$19,508	\$3,020	\$0	\$22,528
	Training and Reporting Audit								120	30		150	\$18,700	\$3,020	\$0	\$21,720
	Total (Base Services)	18	88	360	360	360	280	120	120	60	20	1786	\$272,997	\$47,310	\$1,000	\$321,307
	Hrs/week	2	10	40	40	40	40				2					
	Supplemental Services															
6	Operations Supervision Overtime			90	90	90						270	\$46,080	\$0	\$0	\$46,080
	Total (Base + Supplemental)	18	88	450	450	450	280	120	120	60	20	2,056	\$319,077	\$47,310	\$1,000	\$367,387
	Hrs/week (Base + Supplemental)	2	10	50	50	50	40				2					